

of formal consultation on proposed national-level actions. The Tribe expressed its belief that to be consistent with Forest Service policy, the Forest Service should, *prior* to issuing the final rule, provide an additional 90 days for tribes to consult formally with the Forest Service.

As described above, a total of 159 days was provided for formal consultation with Federally-recognized Indian Tribes and Alaska Native Corporations on the proposed rule at part 218. The formal consultation period of 159 days was fully consistent with the Interim Directive to Forest Service Handbook 1509.13, issued on July 17, 2012, while the opportunity for formal consultation on the proposed rule was already underway. Because the consultation on the proposed rule complies with Forest Service policy, no additional time for formal consultation on the final rule at part 218 is necessary.

Comments provided by another Tribe asserted “* * * interdepartmental fund transfers could be supplied to fund tribes in the operation of mutually beneficial programs and projects. This should be clarified in the regulation so as to facilitate and expedite planning implementation, research, monitoring and continued consultation to further the effectiveness of the Federal-Tribal Relationship in regards to wildland fire management and programs.” Funding mechanisms for project planning and implementation are outside the scope of the rule at part 218 and therefore not addressed in this final rule. This same Tribe also provided several comments specific to certain sections of the proposed rule, including § 218.5—Who May File an Objection and § 218.14—Judicial Proceedings. The responses to those comments, including changes made to the proposed rule as part of comment response, are included in the preceding section of this preamble, titled Public Involvement and Response to Public Comments.

The Department has determined that this final rule does not have substantial direct or unique effects on Indian tribes. This final rule is revising predecisional administrative review regulations for proposed projects and activities implementing land and resource management plans and documented with a Record of Decision or Decision Notice. Tribal governments may participate in the administrative objection process by establishing eligibility as provided at § 218.5 and then filing a timely objection in accordance with the requirements at § 218.8.

No Takings Implications

The Department has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The Department has determined that this final rule will not pose the risk of a taking of private property.

Civil Justice Reform

The Department has reviewed this final rule under Executive Order 12988 on civil justice reform. Upon adoption of this final rule, (1) all State and local laws and regulations that conflict with this rule or that impede full implementation of the rule will be preempted; (2) no retroactive effect will be given to this final rule; and (3) this final rule will not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This final rule will not compel the expenditure of \$100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

List of Subjects in 36 CFR Part 218

Administrative practice and procedure, National forests.

For the reasons set forth in the preamble, 36 CFR part 218 is revised to read as follows:

PART 218—PROJECT-LEVEL PREDECISIONAL ADMINISTRATIVE REVIEW PROCESS

Subpart A—General Provisions

Sec.

- 218.1 Purpose and scope.
- 218.2 Definitions.
- 218.3 Reviewing officer.
- 218.4 Proposed projects and activities not subject to objection.
- 218.5 Who may file an objection.
- 218.6 Computation of time periods.
- 218.7 Giving notice of objection process for proposed projects and activities subject to objection.
- 218.8 Filing an objection.
- 218.9 Evidence of timely filing.
- 218.10 Objections set aside from review.
- 218.11 Resolution of objections.
- 218.12 Timing of project decision.
- 218.13 Secretary's authority.
- 218.14 Judicial proceedings.

- 218.15 Information collection requirements.
- 218.16 Effective dates.

Subpart B—Provisions Specific to Project-Level Proposals Not Authorized Under the Healthy Forests Restoration Act

- 218.20 Applicability and scope.
- 218.21 Emergency situations.
- 218.22 Proposed projects and activities subject to legal notice and opportunity to comment.
- 218.23 Proposed projects and activities not subject to legal notice and opportunity to comment.
- 218.24 Notification of opportunity to comment on proposed projects and activities.
- 218.25 Comments on proposed projects and activities.
- 218.26 Objection time periods.

Subpart C—Provisions Specific to Proposed Projects Authorized Under the Healthy Forests Restoration Act

- 218.30 Applicability and scope.
- 218.31 Authorized hazardous fuel reduction projects subject to objection.
- 218.32 Objection time periods.

Authority: Pub. L. 108–148, 117 Stat 1887 (16 U.S.C. 6515 note); Sec. 428, Pub. L. 112–74 125 Stat 1046.

Subpart A—General Provisions

§ 218.1 Purpose and scope.

This subpart establishes a predecisional administrative review (hereinafter referred to as “objection”) process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans documented with a Record of Decision or Decision Notice, including proposed authorized hazardous fuel reduction projects as defined in the Healthy Forests Restoration Act of 2003 (HFRA). The objection process is the sole means by which administrative review of qualifying projects.

(a) This subpart A provides the general provisions of the objection process, including who may file objections to proposed projects and activities, the responsibilities of the participants in an objection, and the procedures that apply for review of the objection.

(b) Subpart B of this part includes provisions that are specific to proposed projects and activities implementing land and resource management plans documented with a Record of Decision or Decision Notice, except those authorized under the HFRA.

(c) Subpart C of this part includes provisions that are specific to proposed hazardous fuel reduction projects authorized under the HFRA.

§ 218.2 Definitions.

The following definitions apply to this part:

Address. An individual's or organization's current physical mailing address. An email address alone is not sufficient.

Authorized hazardous fuel reduction project. A hazardous fuel reduction project authorized by the Healthy Forests Restoration Act of 2003 (HFRA).

Decision notice (DN). A concise written record of a responsible official's decision when an environmental assessment and a finding of no significant impact (FONSI) have been prepared (36 CFR 220.3). The draft decision notice made available pursuant to § 218.7(b) will include a draft FONSI unless an environmental impact statement is expected to be prepared.

Entity. For purposes of eligibility to file an objection (§ 218.5), an entity includes non-governmental organizations, businesses, partnerships, state and local governments, Alaska Native Corporations, and Indian Tribes.

Environmental assessment (EA). A concise public document for which a Federal agency is responsible that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact (FONSI), aids an agency's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary, and facilitates preparation of a statement when one is necessary (40 CFR 1508.9(a)).

Environmental impact statement (EIS). A detailed written statement as required by Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1508.11).

Forest Service line officer. The Chief of the Forest Service or a Forest Service official who serves in the direct line of command from the Chief.

Lead objector. For an objection submitted with multiple individuals and/or entities listed, the individual or entity identified to represent all other objectors for the purposes of communication, written or otherwise, regarding the objection.

Name. The first and last name of an individual or the complete name of an entity. An electronic username is insufficient for identification of an individual or entity.

National Forest System land. All lands, waters, or interests therein administered by the Forest Service (36 CFR 251.51).

Newspaper(s) of record. Those principal newspapers of general circulation annually identified in a list and published in the **Federal Register**

by each regional forester to be used for publishing notices of projects and activities implementing land management plans.

Objection. The written document filed with a reviewing officer by an individual or entity seeking predecisional administrative review of a proposed project or activity implementing a land management plan, including proposed HFRA-authorized hazardous fuel reduction projects, and documented with an environmental assessment or environmental impact statement.

Objection filing period. The period following publication of the legal notice in the newspaper of record of an environmental assessment and draft Decision Notice, or final environmental impact statement and draft Record of Decision, for a proposed project or activity during which an objection may be filed with the reviewing officer (§ 218.7(c)(2)(iii) and § 218.6(a) and (b)). When the Chief is the responsible official the objection period begins following publication of a notice in the **Federal Register** (§ 218.7(c)(2)(iii)). The objection filing period closes at 11:59 p.m. in the time zone of the receiving office on the last day of the filing period (§ 218.6(a)).

Objection process. The procedures established in this subpart for predecisional administrative review of proposed projects or activities implementing land management plans, including proposed HFRA-authorized hazardous fuel reduction projects.

Objector. An individual or entity filing an objection who submitted written comments specific to the proposed project or activity during scoping or other opportunity for public comment. The use of the term "objector" applies to all persons or entities who meet eligibility requirements associated with the filed objection (§ 218.5).

Record of decision (ROD). A document signed by a responsible official recording a decision that was preceded by preparation of an environmental impact statement (EIS) (see 40 CFR 1505.2).

Responsible official. The Agency employee who has the authority to make and implement a decision on a proposed action subject to this part.

Specific written comments. Written comments are those submitted to the responsible official or designee during a designated opportunity for public participation (§ 218.5(a)) provided for a proposed project. Written comments can include submission of transcriptions or other notes from oral statements or presentation. For the purposes of this

rule, specific written comments should be within the scope of the proposed action, have a direct relationship to the proposed action, and must include supporting reasons for the responsible official to consider.

§ 218.3 Reviewing officer.

(a) The reviewing officer is the U.S. Department of Agriculture (USDA) or Forest Service official having the delegated authority and responsibility to review an objection filed under this part. For project or activity proposals made below the level of the Chief, the reviewing officer is the Forest Service line officer at the next higher administrative level above the responsible official, or the respective Associate Deputy Chief, Deputy Regional Forester, or Deputy Forest Supervisor with the delegation of authority relevant to the provisions of this part. When a project or activity proposal is made by the Chief, the Secretary of Agriculture or Under Secretary, Natural Resources and Environment is the reviewing officer.

(b) The reviewing officer determines procedures to be used for processing objections when the procedures are not specifically described in this part, including, to the extent practicable, such procedures as needed to be compatible with the administrative review processes of other Federal agencies, when projects are proposed jointly. Such determinations are not subject to further administrative review.

§ 218.4 Proposed projects and activities not subject to objection.

Proposed projects and activities are not subject to objection when no timely, specific written comments regarding the proposed project or activity (see § 218.2) are received during any designated opportunity for public comment (see § 218.5(a)). The responsible official must issue a statement in the Record of Decision or Decision Notice that the project or activity was not subject to objection.

§ 218.5 Who may file an objection.

(a) Individuals and entities as defined in § 218.2 who have submitted timely, specific written comments regarding a proposed project or activity that is subject to these regulations during any designated opportunity for public comment may file an objection. Opportunity for public comment on a draft EIS includes request for comments during scoping, the 40 CFR 1506.10 comment period, or other public involvement opportunity where written comments are requested by the responsible official. Opportunity for

public comment on an EA includes during scoping or any other instance where the responsible official seeks written comments.

(b) Federally-recognized Indian Tribes and Alaska Native Corporations are also eligible to file an objection when specific written comments as defined in § 218.2 are provided during Federal-Tribal consultations.

(c) Comments received from an authorized representative(s) of an entity are considered those of the entity only. Individual members of that entity do not meet objection eligibility requirements solely on the basis of membership in an entity. A member or an individual must submit timely, specific written comments independently in order to be eligible to file an objection in an individual capacity.

(d) When an objection lists multiple individuals or entities, each individual or entity must meet the requirements of paragraph (a) of this section. If the objection does not identify a lead objector as required at § 218.8(d)(3), the reviewing officer will delegate the first eligible objector on the list as the lead objector. Individuals or entities listed on an objection that do not meet eligibility requirements will not be considered objectors. Objections from individuals or entities that do not meet the requirements of paragraph (a) of this section will not be accepted and will be documented as such in the objection record.

(e) Federal agencies may not file objections.

(f) Federal employees who otherwise meet the requirements of this subpart for filing objections in a non-official capacity must comply with Federal conflict of interest statutes at 18 U.S.C. 202–209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees must not be on official duty nor use Government property or equipment in the preparation or filing of an objection. Further, employees must not use or otherwise incorporate information unavailable to the public, such as Federal agency documents that are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)).

§ 218.6 Computation of time periods.

(a) *Computation.* All time periods are computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day as stated in the legal notice (11:59 p.m. in the time zone of the

receiving office for objections filed by electronic means such as email or facsimile).

(b) *Starting date.* The day after publication of the legal notice required by § 218.7(c) is the first day of the objection-filing period.

(c) *Publication date.* The publication date of the legal notice of the EA or final EIS in the newspaper of record or, when the Chief is the responsible official, the **Federal Register**, is the exclusive means for calculating the time to file an objection. Objectors may not rely on dates or timeframe information provided by any other source.

(d) *Extensions.* Time extensions are not permitted except as provided at paragraph (a) of this section, and § 218.26(b).

§ 218.7 Giving notice of objection process for proposed projects and activities subject to objection.

(a) In addition to the notification required in paragraph (c) of this section, the responsible official must disclose during scoping and in the EA or EIS that the proposed project or activity is:

(1) A hazardous fuel reduction project as defined by the HFRA, section 101(2), that is subject to subparts A and C of this part, or

(2) A project or activity implementing a land management plan and not authorized under the HFRA, that is subject to subparts A and B of this part.

(b) The responsible official must promptly make available the final EIS or the EA, and a draft Record of Decision (ROD) or draft Decision Notice (DN) and Finding of No Significant Impact (FONSI), to those who have requested the documents or are eligible to file an objection in accordance with § 218.5(a).

(c) Upon distribution, legal notice of the opportunity to object to a proposed project or activity must be published in the applicable newspaper of record identified as defined in § 218.2 for the National Forest System unit. When the Chief is the responsible official, notice must be published in the **Federal Register**. The legal notice or **Federal Register** notice must:

(1) Include the name of the proposed project or activity, a concise description of the draft decision and any proposed land management plan amendments, name and title of the responsible official, name of the forest and/or district on which the proposed project or activity will occur, instructions for obtaining a copy of the final EIS or EA and draft ROD or DN as defined in § 218.2, and instructions on how to obtain additional information on the proposed project or activity.

(2) State that the proposed project or activity is subject to the objection process pursuant to 36 CFR part 218; identify whether the special procedures of subpart B or subpart C of this part are applicable; and include the following:

(i) Name and address of the reviewing officer with whom an objection is to be filed. The notice must specify a street, postal, fax, and email address, the acceptable format(s) for objections filed electronically, and the reviewing officer's business hours for those filing hand-delivered objections.

(ii) A statement that objections will be accepted only from those who have previously submitted specific written comments regarding the proposed project during scoping or other designated opportunity for public comment in accordance with § 218.5(a). The statement must also specify that issues raised in objections must be based on previously submitted timely, specific written comments regarding the proposed project unless based on new information arising after designated opportunities.

(iii) A statement that the publication date of the legal notice in the newspaper of record or **Federal Register** notice is the exclusive means for calculating the time to file an objection (see §§ 218.26(a) and 218.32(a)), and that those wishing to object should not rely upon dates or timeframe information provided by any other source. A specific date must not be included in the notice.

(iv) A statement that an objection, including attachments, must be filed (regular mail, fax, email, hand-delivery, express delivery, or messenger service) with the appropriate reviewing officer (see §§ 218.3 and 218.8) within 30 days of the date of publication of the legal notice for the objection process if the proposal is an authorized hazardous fuel reduction project, or within 45 days if the proposal is otherwise a project or activity implementing a land management plan. The statement must also describe the evidence of timely filing in § 218.9.

(v) A statement describing the minimum content requirements of an objection (see § 218.8(d)) and identify that incorporation of documents by reference is permitted only as provided for at § 218.8(b).

(d) Within 4 calendar days of the date of publication of the legal notice in the newspaper of record or, when applicable, the **Federal Register**, a digital image of the legal notice or **Federal Register** publication, or the exact text of the notice, must be made available on the Web. Such postings must clearly indicate the date the notice was published in the newspaper of

record or **Federal Register**, and the name of the publication.

(e) Through notice published annually in the **Federal Register**, each regional forester must advise the public of the newspaper(s) of record utilized for publishing legal notice required by this part.

§ 218.8 Filing an objection.

(a) Objections must be filed with the reviewing officer in writing. All objections are available for public inspection during and after the objection process.

(b) Incorporation of documents by reference is not allowed, except for the following list of items that may be referenced by including date, page, and section of the cited document, along with a description of its content and applicability to the objection. All other documents must be included with the objection.

(1) All or any part of a Federal law or regulation.

(2) Forest Service directives and land management plans.

(3) Documents referenced by the Forest Service in the proposed project EA or EIS that is subject to objection.

(4) Comments previously provided to the Forest Service by the objector during public involvement opportunities for the proposed project where written comments were requested by the responsible official.

(c) Issues raised in objections must be based on previously submitted specific written comments regarding the proposed project or activity and attributed to the objector, unless the issue is based on new information that arose after the opportunities for comment. The burden is on the objector to demonstrate compliance with this requirement for objection issues (see paragraph (d)(6) of this section).

(d) At a minimum, an objection must include the following:

(1) Objector's name and address as defined in § 218.2, with a telephone number, if available;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) When multiple names are listed on an objection, identification of the lead objector as defined in § 218.2.

Verification of the identity of the lead objector must be provided upon request or the reviewing officer will designate a lead objector as provided in § 218.5(d);

(4) The name of the proposed project, the name and title of the responsible official, and the name(s) of the national forest(s) and/or ranger district(s) on which the proposed project will be implemented;

(5) A description of those aspects of the proposed project addressed by the objection, including specific issues related to the proposed project; if applicable, how the objector believes the environmental analysis or draft decision specifically violates law, regulation, or policy; suggested remedies that would resolve the objection; supporting reasons for the reviewing officer to consider; and

(6) A statement that demonstrates the connection between prior specific written comments on the particular proposed project or activity and the content of the objection, unless the objection concerns an issue that arose after the designated opportunity(ies) for comment (see paragraph (c) of this section).

§ 218.9 Evidence of timely filing.

(a) It is the objector's responsibility to ensure timely filing of a written objection with the reviewing officer. Timeliness must be determined by the following indicators:

(1) The date of the U.S. Postal Service postmark for an objection received before the close of the fifth business day after the objection filing period;

(2) The agency's electronically generated posted date and time for email and facsimiles;

(3) The shipping date for delivery by private carrier for an objection received before the close of the fifth business day after the objection filing period; or

(4) The official agency date stamp showing receipt of hand delivery.

(b) For emailed objections, the sender should receive an automated electronic acknowledgement from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgment of receipt of the objection, it is the sender's responsibility to ensure timely filing by other means.

§ 218.10 Objections set aside from review.

(a) The reviewing officer must set aside and not review an objection when one or more of the following applies:

(1) Objections are not filed in a timely manner (see §§ 218.7(c)(2)(v) and 218.9).

(2) The proposed project is not subject to the objection procedures in §§ 218.1, 218.4, 218.20, and 218.31.

(3) The individual or entity did not submit timely and specific written comments regarding the proposed project or activity during scoping or another designated opportunity for public comment (see § 218.5(a)).

(4) Except for issues that arose after the opportunities for comment, none of the issues included in the objection are based on previously submitted specific

written comments and the objector has not provided a statement demonstrating a connection between the comments and objection issues (see §§ 218.8(c) and 218.8(d)(6)).

(5) The objection does not provide sufficient information as required by § 218.8(d)(5) and (6) for the reviewing officer to review.

(6) The objector withdraws the objection.

(7) An objector's identity is not provided or cannot be determined from the signature (written or electronically scanned) and a reasonable means of contact is not provided (see § 218.8(d)(1) and (2)).

(8) The objection is illegible for any reason, including submissions in an electronic format different from that specified in the legal notice.

(9) The responsible official cancels the objection process underway to reinstate the objection procedures at a later date or withdraw the proposed project or activity.

(b) The reviewing officer must give prompt written notice to the objector and the responsible official when an objection is set aside from review and must state the reasons for not reviewing the objection. If the objection is set aside from review for reasons of illegibility or lack of a means of contact, the reasons must be documented and a copy placed in the objection record.

§ 218.11 Resolution of objections.

(a) *Meetings.* Prior to the issuance of the reviewing officer's written response, either the reviewing officer or the objector may request to meet to discuss issues raised in the objection and potential resolution. The reviewing officer has the discretion to determine whether adequate time remains in the review period to make a meeting with the objector practical, the appropriate date, duration, agenda, and location for any meeting, and how the meeting will be conducted to facilitate the most beneficial dialogue; e.g., face-to-face office meeting, project site visit, teleconference, video conference, etc. The responsible official should be a participant along with the reviewing officer in any objection resolution meeting. Meetings are not required to be noticed but are open to attendance by the public, and the reviewing officer will determine whether those other than objectors may participate.

(b) *Reviewing officer's response to objections.* (1) A written response must set forth the reasons for the response, but need not be a point-by-point response and may contain instructions to the responsible official, if necessary. In cases involving more than one

objection to a proposed project or activity, the reviewing officer may consolidate objections and issue one or more responses.

(2) No further review from any other Forest Service or USDA official of the reviewing officer's written response to an objection is available.

§ 218.12 Timing of project decision.

(a) The responsible official may not sign a ROD or DN subject to the provisions of this part until the reviewing officer has responded in writing to all pending objections (see § 218.11(b)(1)).

(b) The responsible official may not sign a ROD or DN subject to the provisions of this part until all concerns and instructions identified by the reviewing officer in the objection response have been addressed.

(c) When no objection is filed within the objection filing period (see §§ 218.26 and 218.32):

(1) The reviewing officer must notify the responsible official.

(2) Approval of the proposed project or activity documented in a ROD in accordance with 40 CFR 1506.10, or in a DN may occur on, but not before, the fifth business day following the end of the objection filing period.

(d) When a proposed project or activity is not subject to objection because no timely, specific written comments regarding the proposal were received during a designated opportunity for public comment (see § 218.4), the approval of a proposed project or activity documented in a ROD must be in accordance with 40 CFR 1506.10 and 36 CFR 220.5(g), and the approval of a proposed project or activity documented in a DN must be made in accordance with 36 CFR 220.7(c) and (d).

§ 218.13 Secretary's authority.

(a) Nothing in this section shall restrict the Secretary of Agriculture from exercising any statutory authority regarding the protection, management, or administration of National Forest System lands.

(b) Projects and activities proposed by the Secretary of Agriculture or the Under Secretary, Natural Resources and Environment, are not subject to the procedures set forth in this part. Approval of projects and activities by the Secretary or Under Secretary constitutes the final administrative determination of the U.S. Department of Agriculture.

§ 218.14 Judicial proceedings.

(a) The objection process set forth in this subpart fully implements Congress'

design for a predecisional administrative review process. These procedures present a full and fair opportunity for concerns to be raised and considered on a project-by-project basis. Individuals and groups must structure their participation so as to alert the local agency officials making particular land management decisions of their positions and contentions.

(b) Any filing for Federal judicial review of a decisions covered by this subpart is premature and inappropriate unless the plaintiff has exhausted the administrative review process set forth in this part (see 7 U.S.C. 6912(e) and 16 U.S.C. 6515(c)).

§ 218.15 Information collection requirements.

The rules of this part specify the information that objectors must provide in an objection to a proposed project (see § 218.8). As such, these rules contain information collection requirements as defined in 5 CFR part 1320. These information requirements are assigned OMB Control Number 0596-0172.

§ 218.16 Effective dates.

(a) *Effective dates for HFRA-authorized projects.* (1) Provisions of this part that are applicable to hazardous fuel reduction projects authorized under the HFRA are in effect as of March 27, 2013 for projects where scoping begins on or after this date.

(2) Hazardous fuel reduction project proposals under the HFRA for which public scoping began prior to March 27, 2013 may use the predecisional objection procedures posted at <http://www.fs.fed.us/objections>.

(3) Hazardous fuel reduction project proposals that are re-scoped with the public or re-issued for notice and comment after March 27, 2013 are subject to this part.

(b) *Effective dates for non-HFRA-authorized projects.* (1) Project proposals with public scoping completed, but that have not had legal notice published. The applicable provisions of this part are in effect as of March 27, 2013 where public scoping was previously initiated for project proposals, but legal notice of the opportunity to comment has not yet been published; unless scoping or other public notification of the project (e.g. Schedule of Proposed Actions) has clearly indicated the project to be under the former 36 CFR part 215 appeal process.

(2) Project proposals which have legal notice published, but a Decision Notice or Record of Decision has not been signed. If a Decision Notice or Record of

Decision is signed within 6 months of March 27, 2013, it will be subject to the 36 CFR part 215 appeal process. If the Decision Notice or Record of Decision is to be signed more than 6 months beyond March 27, 2013, the project proposal will be subject to the requirements of this part. In this case, the responsible official will notify all interested and affected parties who participated during scoping or provided specific written comment regarding the proposed project or activity during the comment period initiated with a legal notice that the project proposal will be subject to the predecisional objection regulations at 36 CFR part 218. All interested and affected parties who provided written comment as defined in § 218.2 during scoping or the comment period will be eligible to participate in the objection process.

(3) Project proposals are subject to the requirements of this part when initial public scoping, re-scoping with the public, or re-issuance of notice and comment begins on or after March 27, 2013.

Subpart B—Provisions Specific to Project-Level Proposals Not Authorized Under Healthy Forests Restoration Act

§ 218.20 Applicability and scope.

This subpart includes provisions that are specific to proposed projects and activities implementing land and resource management plans and documented with a Record of Decision or Decision Notice, except those authorized under the Healthy Forests Restoration Act (HFRA). The sections of this subpart must be considered in combination with the general provisions of subpart A of this part for the full complement of regulatory direction pertaining to predecisional administrative review of the applicable projects and activities.

§ 218.21 Emergency situations.

(a) *Authority.* The Chief and the Associate Chief of the Forest Service are authorized to make the determination that an emergency situation exists as defined in this section.

(b) *Emergency situation definition.* A situation on National Forest System (NFS) lands for which immediate implementation of a decision is necessary to achieve one or more of the following: Relief from hazards threatening human health and safety; mitigation of threats to natural resources on NFS or adjacent lands; avoiding a loss of commodity value sufficient to jeopardize the agency's ability to accomplish project objectives directly

related to resource protection or restoration.

(c) *Determination.* The determination that an emergency situation exists shall be based on an examination of the relevant information. During the consideration by the Chief or Associate Chief, additional information may be requested from the responsible official. The determination that an emergency situation does or does not exist is not subject to administrative review under this part.

(d) *Implementation.* When it is determined that an emergency situation exists with respect to all or part of the proposed project or activity, the proposed action shall not be subject to the predecisional objection process and implementation may proceed as follows:

(1) Immediately after notification (see 36 CFR 220.7(d)) when the decision is documented in a Decision Notice (DN).

(2) Immediately after complying with the timeframes and publication requirements described in 40 CFR 1506.10(b)(2) when the decision is documented in a Record of Decision (ROD).

(e) *Notification.* The responsible official shall identify any emergency situation determination made for a project or activity in the notification of the decision (see 36 CFR 220.5(g) and 220.7(d)).

§ 218.22 Proposed projects and activities subject to legal notice and opportunity to comment.

The legal notice and opportunity to comment procedures of this subpart apply only to:

(a) Proposed projects and activities implementing land management plans for which an environmental assessment (EA) is prepared;

(b) Proposed projects and activities implementing land management plans for which a draft or supplemental environmental impact statement (EIS) is prepared and notice and comment procedures are governed by 40 CFR parts 1500 through 1508;

(c) Proposed amendments to a land management plan that are included as part of a proposed project or activity covered in paragraphs (a) or (b) of this section which are applicable only to that proposed project or activity;

(d) A proposed project or activity for which a supplemental or revised EA or EIS is prepared based on consideration of new information or changed circumstances; and

(e) Proposed research activities to be conducted on National Forest System land for which an EA or EIS is prepared.

§ 218.23 Proposed projects and activities not subject to legal notice and opportunity to comment.

The legal notice and opportunity to comment procedures of this subpart do not apply to:

(a) [Reserved];

(b) Proposed land management plans, plan revisions, and plan amendments that are subject to the objection process set out in 36 CFR part 219, subpart B;

(c) Proposed plan amendments associated with a project or activity where the amendment applies not just to the particular project or activity but to all future projects and activities (see 36 CFR 219.59(b));

(d) Proposed projects and activities not subject to the provisions of the National Environmental Policy Act and the implementing regulations at 40 CFR parts 1500 through 1508 and 36 CFR part 220;

(e) Determinations by the responsible official, after consideration of new information or changed circumstances, that a correction, supplement, or revision of the EA or EIS is not required;

(f) Rules promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.) or policies and procedures issued in the Forest Service Manual and Handbooks (36 CFR part 216); and

(g) Proposed hazardous fuel reduction projects authorized under the Healthy Forests Restoration Act.

§ 218.24 Notification of opportunity to comment on proposed projects and activities.

(a) *Responsible official.* The responsible official shall:

(1) Provide legal notice of the opportunity to comment on a proposed project or activity implementing a land management plan.

(2) Determine the most effective timing and then publish the legal notice of the opportunity to comment as provided for in paragraph (c)(2) of this section.

(3) Promptly provide notice about the proposed project or activity to any individual or entity who has requested it and to those who have participated in planning for that project.

(4) Accept all written comments on the proposed project or activity as provided for in § 218.25(a)(4).

(b) *Content of legal notice.* All legal notices shall include the following:

(1) The title and brief description of the proposed project or activity.

(2) A general description of the proposed project or activity's location with sufficient information to allow the interested public to identify the location.

(3) When applicable, a statement that the responsible official is requesting an emergency situation determination or it has been determined that an emergency situation exists for the proposed project or activity as provided for in § 218.21.

(4) For a proposed project or activity to be analyzed and documented in an environmental assessment (EA), a statement that the opportunity to comment ends 30 days following the date of publication of the legal notice in the newspaper of record (see § 218.25(a)(2)); as newspaper publication dates may vary, legal notices shall not contain the specific date.

(5) For a proposed project or activity that is analyzed and documented in a draft environmental impact statement (EIS), a statement that the opportunity to comment ends 45 days following the date of publication of the notice of availability (NOA) in the **Federal Register** (see § 218.25(a)(2)). The legal notice must be published after the NOA and contain the NOA publication date.

(6) A statement that only those who submit timely and specific written comments regarding the proposed project or activity during a public comment period established by the responsible official are eligible to file an objection.

(7) The responsible official's name, title, telephone number, and addresses (street, postal, facsimile, and email) to whom comments are to be submitted and the responsible official's office business hours for those submitting hand-delivered comments (see § 218.25(a)(4)(ii)).

(8) A statement indicating that for objection eligibility each individual or representative from each entity submitting timely and specific written comments regarding the proposed project or activity must either sign the comments or verify identity upon request.

(9) The acceptable format(s) for electronic comments.

(10) Instructions on how to obtain additional information on the proposed project or activity.

(c) *Publication.* (1) Through notice published annually in the **Federal Register**, each Regional Forester shall advise the public of the newspaper(s) of record used for publishing legal notices required by this part.

(2) Legal notice of the opportunity to comment on a proposed project or activity shall be published in the applicable newspaper of record identified in paragraph (c)(1) of this section for each National Forest System unit. When the Chief is the responsible official, notice shall also be published in

the **Federal Register**. The publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to submit written comments on a proposed project or activity to be analyzed and documented in an EA. The publication date of the NOA in the **Federal Register** is the exclusive means for calculating the time to submit written comments on a proposed project or activity that is analyzed and documented in a draft EIS.

(3) Within 4 calendar days of the date of publication of the legal notice in the newspaper of record or, when applicable, the **Federal Register**, a digital image of the legal notice or **Federal Register** publication, or the exact text of the notice, must be made available on the Web. Such postings must clearly indicate the date the notice was published in the newspaper of record or **Federal Register**, and the name of the publication.

§ 218.25 Comments on proposed projects and activities.

(a) *Opportunity to comment.* (1) *Time period for submission of comments—*

(i) Comments on a proposed project or activity to be documented in an environmental assessment shall be accepted for 30 days beginning on the first day after the date of publication of the legal notice.

(ii) Comments on a proposed project or activity to be documented in an environmental impact statement shall be accepted for a minimum of 45 days beginning on the first day after the date of publication in the **Federal Register** of the notice of availability of the draft EIS.

(iii) *Comments.* It is the responsibility of all individuals and organizations to ensure that their comments are received in a timely manner as provided for in paragraph (a)(4) of this section.

(iv) *Extension.* The time period for the opportunity to comment on a proposed project or activity to be documented with an environmental assessment shall not be extended.

(2) *Computation of the comment period.* The time period is computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, comments shall be accepted until the end of the next Federal working day (11:59 p.m. in the time zone of the receiving office for comments filed by electronic means such as email or facsimile).

(3) *Requirements.* To be eligible to submit an objection, individuals and entities must have provided the following during the comment period:

(i) Name and postal address. Email address in addition is recommended but not required.

(ii) Title of the proposed project or activity.

(iii) Specific written comments as defined in § 218.2 regarding the proposed project or activity, along with supporting reasons.

(iv) Signature or other verification of identity upon request and identification of the individual or entity who authored the comment(s). For comments listing multiple entities or multiple individuals, a signature or other means of verification must be provided for the individual authorized to represent each entity and for each individual in the case of multiple names. A scanned signature or other means of verifying the identity of the individual or entity representative may be used for electronically submitted comments.

(v) Individual members of an entity must submit their own comments to establish personal eligibility; comments received on behalf of an entity are considered as those of the entity only.

(4) Evidence of timely submission. When there is a question about timely submission of comments, timeliness shall be determined as follows:

(i) Written comments must be postmarked by the Postal Service, emailed, faxed, or otherwise submitted (for example, express delivery service) by 11:59 p.m. in the time zone of the receiving office on the 30th calendar day following publication of the legal notice for proposed projects or activities to be analyzed and documented in an EA or the 45th calendar day following publication of the NOA in the **Federal Register** for a draft EIS.

(ii) Hand-delivered comments must be time and date imprinted at the correct responsible official's office by the close of business on the 30th calendar day following publication of the legal notice for proposed projects or activities to be analyzed and documented in an EA or the 45th calendar day following publication of the NOA in the **Federal Register** for a draft EIS.

(iii) For emailed comments, the sender should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgment of the receipt of the comments, it is the sender's responsibility to ensure timely receipt by other means.

(b) *Consideration of comments.* (1) The responsible official shall consider all written comments submitted in compliance with paragraph (a) of this section.

(2) All written comments received by the responsible official shall be placed in the project file and shall become a matter of public record.

§ 218.26 Objection time periods.

(a) *Time to file an objection.* Written objections, including any attachments, must be filed with the reviewing officer within 45 days following the publication date of the legal notice of the EA or final EIS in the newspaper of record or the publication date of the notice in the **Federal Register** when the Chief is the responsible official (see § 218.7(c)). It is the responsibility of objectors to ensure that their objection is received in a timely manner.

(b) *Time for responding to an objection.* The reviewing officer must issue a written response to the objector(s) concerning their objection(s) within 45 days following the end of the objection filing period. The reviewing officer has the discretion to extend the time for up to 30 days when he or she determines that additional time is necessary to provide adequate response to objections or to participate in resolution discussions with the objector(s).

Subpart C—Provisions Specific to Proposed Projects Authorized Under the Healthy Forests Restoration Act

§ 218.30 Applicability and scope.

This subpart includes provisions that are specific to proposed hazardous fuel reduction projects documented with a Record of Decision or Decision Notice, and authorized under the Healthy Forests Restoration Act (HFRA). The sections of this subpart must be considered in combination with the general provisions of subpart A of this part for the full complement of regulatory direction pertaining to predecisional administrative review of the applicable projects and activities.

§ 218.31 Authorized hazardous fuel reduction projects subject to objection.

(a) Only authorized hazardous fuel reduction projects as defined by the HFRA, section 101(2), occurring on National Forest System land that have been analyzed in an EA or EIS are subject to this subpart. Authorized hazardous fuel reduction projects processed under the provisions of the HFRA are not subject to the requirements in subpart B of this part.

(b) When authorized hazardous fuel reduction projects are approved contemporaneously with a plan amendment that applies only to that project, the objection process of this subpart applies to both the plan amendment and the project.

§ 218.32 Objection time periods.

(a) *Time to file an objection.* Written objections, including any attachments, must be filed with the reviewing officer within 30 days following the publication date of the legal notice of the EA or final EIS in the newspaper of record or the publication date of the notice in the **Federal Register** when the Chief is the responsible official (see § 218.6(c)). It is the responsibility of objectors to ensure that their objection is received in a timely manner.

(b) *Time for responding to an objection.* The reviewing officer must issue a written response to the objector(s) concerning their objection(s) within 30 days following the end of the objection filing period.

Dated: March 20, 2013.

Harris D. Sherman,

Under Secretary, Natural Resources and Environment (NRE).

[FR Doc. 2013-06857 Filed 3-26-13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2011-0665; FRL-9381-4]

Emamectin Benzoate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of emamectin benzoate in or on the cucurbit vegetable crop group 9. Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 27, 2013. Objections and requests for hearings must be received on or before May 28, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2011-0665, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through

Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (703) 308-9367; email address: ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2011-0665 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 28, 2013. Addresses for mail and hand delivery of objections and

hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2011-0665, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.
- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.htm>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of September 7, 2011 (76 FR 55329) (FRL-8886-7), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E7904) by IR-4, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.505 be amended by establishing tolerances for residues of the insecticide emamectin benzoate, 4'-epimethylamino-4'-deoxyavermectin B1 benzoate (a mixture of a minimum of 90% 4'-epimethylamino-4'-deoxyavermectin B1a and a maximum of 10% 4'-epimethylamino-4'-deoxyavermectin B1b benzoate), and its metabolites 8,9 isomer of the B1a and B1b component of the parent insecticide, in or on vegetable, cucurbit, group 9 at 0.03 parts per million (ppm). That document referenced a summary of the petition prepared by Syngenta, the registrant, which is available in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.